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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* TRACI J. BARRON and MARISA A. WILLIAMS

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Appeal 2015-001287<sup>1,2</sup>  
Application 12/769,417  
Technology Center 3600

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Before PHILIP J. HOFFMANN, BRUCE T. WIEDER, and  
BRADLEY B. BAYAT, *Administrative Patent Judges*.

HOFFMANN, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1–4, 6–8, and 10–27. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> Our decision references Appellants' Specification ("Spec.," filed Apr. 28, 2010), and Appeal Brief ("Appeal Br.," filed June 17, 2014), as well as the Final Office Action ("Final Action," mailed Dec. 18, 2013) and the Examiner's Answer ("Answer," mailed Sept. 2, 2014).

<sup>2</sup> Under the Appeal Brief section titled Real Party in Interest, Appellants indicate that the "application has been assigned to Kolcraft Enterprises, Inc." Appeal Br. 2.

According to Appellants, the invention is directed “to child seat inserts and methods of manufacturing the same.” Spec. ¶ 2. Claims 1 and 25 are the only independent claims on appeal. *See* Appeal Br., Claims App. We reproduce claim 1, below, as representative of the appealed claims.

1. A seat insert comprising:
  - a fastener to removably couple the seat insert to a child caretaking structure;
  - a first base panel having a first length, a first end and a second end; and
  - a second base panel having a second length, a first end and a second end, the second end of the first base panel being coupled to the first end of the second base panel, wherein the first length is longer than the second length so that the first base panel is positioned at a first incline and the second base panel is positioned at a second incline different than the first incline to position a first child support surface of the first base panel at an obtuse angle relative to a second child support surface of the second base panel to cause a child occupant of the seat insert to assume a semi-upright position.

*Id.*

## REJECTIONS AND PRIOR ART

The Examiner rejects the claims as follows:

- I. claims 1, 2, 6–8, 13, 14, 21, and 25 under U.S.C. § 103(a) as unpatentable over LaValle (US 6,708,356 B1, iss. Mar. 23, 2004) and Mendes (US 2009/0077739 A1, pub. Mar. 26, 2009);
- II. claims 3 and 4 under 35 U.S.C. § 103(a) as unpatentable over LaValle, Mendes, and Hsia (US 6,539,563 B1, iss. Apr. 1, 2003);

- III. claims 10–12, 24, and 26 under 35 U.S.C. § 103(a) as unpatentable over LaValle, Mendes, and Hagerstrom (US 5,096,260, iss. Mar. 17, 1992);
- IV. claim 15 under 35 U.S.C. § 103(a) as unpatentable over LaValle, Mendes, and Goldberg (US 3,311,934, iss. Apr. 4, 1967);
- V. claim 16 under 35 U.S.C. § 103(a) as unpatentable over LaValle, Mendes, Goldberg, and Davis (US 6,026,525, iss. Feb. 22, 2000);
- VI. claims 17 and 18 under 35 U.S.C. § 103(a) as unpatentable over LaValle, Mendes, and Harvey (US 2,467,890, iss. Apr. 19, 1949);
- VII. claim 19 under 35 U.S.C. § 103(a) as unpatentable over LaValle, Mendes, and Myers (US 5,778,465, iss. July 14, 1998);
- VIII. claims 20 and 22 under 35 U.S.C. § 103(a) as unpatentable over LaValle, Mendes, and Warner, Jr. (US 6,192,535 B1, iss. Feb. 27, 2001);
- IX. claim 23 under 35 U.S.C. § 103(a) as unpatentable over LaValle, Mendes, and Burkholder (US 2008/0271243 A1, pub. Nov. 6, 2008); and
- X. claim 27 under 35 U.S.C. § 103(a) as unpatentable over LaValle, Mendes, and Davis.

*See* Final Action 2–15.

## ANALYSIS

With respect to Rejection I, independent claim 1, from which claims 2, 6–8, 13, 14, and 21 depend, recites

a first base panel having a first length, a first end and a second end; and

a second base panel having a second length, a first end and a second end, the second end of the first base panel being coupled to the first end of the second base panel, wherein the first length is longer than the second length so that the first base panel is positioned at a first incline and the second base panel is positioned at a second incline different than the first incline to position a first child support surface of the first base panel at an obtuse angle relative to a second child support surface of the second base panel to cause a child occupant of the seat insert to assume a semi-upright position.

Appeal Br., Claims App. In the Appeal Brief, Appellants argue, among other things, that the Examiner erroneously relies on Mendes to disclose “the second end of the first base panel being coupled to the first end of the second base panel, wherein the first length [of the first base panel] is longer than the second length” of the second base panel, as claimed. *See* Appeal Br. 8–11.

In the Response to Arguments section of the Answer, the Examiner finds that Mendes discloses both the first and second base panels, determining that

[w]hile Mendes’[s] [F]igures 13 and 14 show the second base panel (inclination flap [104]) attached to the first base panel (floor [102]) at a medial portion of the floor, the [E]xaminer again points to the suggestion above that “the length of the flap may be substantially less than or equal to the length of the bassinet floor [102].” In the case where *the length of the flap is equal to the length of the bassinet floor*, it would be attached to the end or nearly the end of the floor [102] and thus meet the instant invention’s claim language.

Answer 5–6 (emphasis added). We note, however, that even if the Examiner is correct that “[i]n the case where *the length of the flap is equal to the length of the bassinet floor*, [the flap] would be attached to the end or nearly the end of the floor . . . and thus meet the instant invention’s claim language” (*id.* at 6) (emphasis added) “the second end of the first base panel [is] coupled to the first end of the second base panel” as required by the claim (Appeal Br., Claims App.), claim 1 additionally requires that “the first length [of the first base panel] is longer than the second length” (*id.*), which is contrary to the Examiner’s first statement we reproduce at the beginning of this sentence.

The Examiner sets forth what we characterize as an alternative finding with respect to Mendes. Specifically, the Examiner explains

[l]ooking again at [Mendes’s] Figure 13, one may also consider the left-hand portion of the floor corresponding to [102a] as the first base panel and the [104] as the second base panel. In this case, second end of the first base panel (left-hand portion [102a]) is clearly attached to first end of the second base panel (flap [104]) and an edge [112]).

Answer 6. We determine, however, that Mendes’s first half 102a of floor 102 is, as the name suggests, a portion (i.e., half) of what appears to be continuous floor 102, while flap 114 appears to be the entire component that includes the portion connected to first half 102a and the inclined portion that is not connected to floor 102. *See, e.g.*, Mendes Figs. 13, 14. We do not agree with the Examiner that attaching a portion of flap 114 to a portion of floor 102 results in an end of a first base panel (i.e., the end of the non-connected portion of flap 114) being connected to an end of a second base panel (i.e., the end of the connected portion of floor 102), inasmuch as we

recognize that it is the middle portions of flap 114 and floor 102 that are, in fact, being connected to one another.

Thus, based on the foregoing, we do not sustain the rejection of independent claim 1, or of claims 2, 6–8, 13, 14, and 21 that depend from claim 1. Inasmuch as independent claim 25 recites a similar limitation, and is rejected from similar reasons as claim 1, we also do not sustain the rejection of claim 25. *See* Appeal Br., Claims App.; *see also* Final Action 5–6. With respect to Rejections II–X, inasmuch as the Examiner does not establish that any other reference remedies the deficiency in the rejections of any of the remaining claims, we do not sustain any of the rejections of claim 10–12, 15–20, 22–24, 26, and 27 that depend from claims 1 and 25.

#### DECISION

We REVERSE the Examiner’s obviousness rejections of claims 1–4, 6–8, and 10–27.

REVERSED